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## **PART 84—ENCUMBRANCES OF TRIBAL LAND—CONTRACT APPROVALS**

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AUTHORITY: 25 U.S.C. 81, Pub. L. 106–179.

SOURCE: 66 FR 38923, July 26, 2001, unless otherwise noted.

### **§ 84.001 What is the purpose of this part?**

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

### **§ 84.002 What terms must I know?**

The *Act* means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

*Encumber* means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

*Indian tribe*, as defined by the Act, means any Indian tribe, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the Secretary to Indians because of their status as Indians.

*Secretary* means the Secretary of the Interior or his or her designated representative.

*Tribal lands* means those lands held by the United States in trust for an Indian tribe or those lands owned by an Indian tribe subject to federal restrictions against alienation, as referred to Public Law 106–179 as “Indian lands.”

### **§ 84.003 What types of contracts and agreements require Secretarial approval under this part?**

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber tribal lands for a period of seven or more years require Secretarial approval under this part.

### **§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?**

Yes, the following types of contracts or agreements do not require Secretarial approval under this part:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152 (patents in fee, certificates or competency); 162 (non-mineral leases, leasehold mortgages); 163 (timber contracts); 166 (grazing permits); 169 (rights-of-way); 200 (coal leases); 211 (mineral leases); 216 (surface mining permits and leases); and 225 (mineral development agreements);

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(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477;

(c) Sublease and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title;

(d) Contracts or agreements that convey to tribal members any rights for temporary use of tribal lands, assigned by Indian tribes in accordance with tribal laws or custom;

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are exempt from Secretarial approval under the terms of a corporate charter authorized by 25 U.S.C. 477;

(g) Tribal attorney contracts, including those for the Five Civilized Tribes that are subject to our approval under 25 U.S.C. 82a;

(h) Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa.

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Commission's regulations; or

(j) Contracts or agreements relating to the use of tribal lands for hydro-power projects where the tribal lands meet the definition of a "reservation" under the Federal Power Act (FPA), provided that:

(1) Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) FERC license or exemption includes the Secretary's conditions for protection and utilization of the reservation under section 4(e) and payment of annual use charges to the tribe under section 10(e) of the FPA (16 U.S.C. 803(e)).

### **§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?**

No, the Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. Within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

### **§ 84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?**

(a) The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

(1) Violates federal law; or

(2) Does not contain at least one of the following provisions that:

(i) Provides for remedies in the event the contract or agreement is breached;

(ii) References a tribal code, ordinance or ruling of a court of competent jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

(iii) Includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

(b) The Secretary will consult with the Indian tribe as soon as practicable before disapproving a contract or agreement regarding the elements of the contract or agreement that may lead to disapproval.

### **§ 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?**

A contract or agreement that requires Secretarial approval under this